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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,753	03/30/2001	Tuqiang Ni	2328-053	5171

7590 04/28/2009
LOWE HAUPTMAN GILMAN & BERNER, LLP
Suite 310
1700 Diagonal Road
Alexandria, VA 22314

EXAMINER

ALEJANDRO MULERO, LUZ L

ART UNIT	PAPER NUMBER
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1792

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04/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TUQIANG NI,
FRANK Y. LIN, CHUNG-HO HUANG
and
WEINAN JIANG

Application No. 09/821,753
Technology Center 1700

Mailed: April 28, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal.*
BENNETT, *Review Team Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 17, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on January 13, 2009, in response to the Examiner's Answer mailed November 13, 2008.

Title 37 of the Code of Federal Regulations, § 41.43 (2008) states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

An Order Returning Undocketed Appeal to Examiner was mailed on March 2, 2009, which requested consideration of the January 13, 2009 Reply Brief. The Communication mailed March 18, 2009, in response to the January 13, 2009 Order, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per § 1208, part II, of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007). A Supplemental Examiner's Answer requires a Director or designee's approval.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed March 18, 2009;

- 2) to generate and mail either:
 - a) a revised Communication properly acknowledging to the Reply Brief dated January 13, 2009 in accordance with MPEP § 1208, part II; OR
 - b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee),¹ if appropriate;

and

- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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¹ In Technology Center 1700, only a Director or Quality Assurance Specialist may sign a Supplemental Examiner's Answer.